

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FILE
NO PROTEST RECEIVED
Please copies to District
Date [REDACTED]
Surname [REDACTED]

Date: OCT 24 2000

[REDACTED]

Contact Person:

[REDACTED]

ID Number:

[REDACTED]

Telephone Number:

[REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were formed on [REDACTED], by [REDACTED] which states "That said port authority, when established shall be a public agency of the City of [REDACTED] Union [REDACTED] with all the powers and authority set forth in [REDACTED]". Section 2 of the Act provides that "two or more counties, or two or more municipalities, whether or not in the same county are authorized and empowered to organize and cause to be established a metropolitan port authority."

The [REDACTED] authorizes and directs the Mayor of the municipality and the County Judge to set forth the total number of members of the Board of Directors; the number of the Board of Directors of the port authority that shall represent each participating municipality and/or county; and shall appoint the persons to be the members of the Board of Directors of the port authority. The term of each member of the Board of Directors shall be for three years from the date of his appointment by the governing body of the county/municipality, and he shall serve for such term and thereafter until his successor shall be duly appointed and qualified.

Section 5(g) grants "the power to create and operate such agencies, departments, and instrumentalities as said port authorities may deem necessary or desirable for the accomplishment and furtherance of any of the purposes of this Act." Section 5(i) grants you the "power to adopt, alter and repeal, from time to time, bylaws, rules and regulations governing the manner in which business of said port authorities may be transacted and in which the purposes and powers of said port authorities may be accomplished and carried out." Section 5(k) grants you "the power to promulgate and to alter and repeal, from time to time, rules and regulations pertaining to the use of facilities and services of said port authorities."

[REDACTED]

Section 6 grants you the power to "acquir[e] rights-of-way and property necessary or desirable for the carrying out of the powers for the accomplishment of the purposes of this Act, port authorities shall have the right and power to acquire property by gift, by purchase, by negotiation or by condemnation. If a port authority determines to exercise the right of eminent domain, the same may be exercised in the manner now provided for taking private property for railroads as provided by [REDACTED]

Section 9(a) provides that "Port authorities are hereby authorized and empowered to enter into necessary contracts for the borrowing of funds, pursuant to the provisions of this Act, which they may determine will be required to carry out the powers of port authorities and to carry out the purposes of this Act. In this regard, port authorities are authorized and empowered to issue bonds and to use the proceeds thereof for the carrying out of the purposes of port authorities and the accomplishment of the purposes of this Act, either alone or together with other available funds and revenues." Section 12 states "Bonds issued under the provisions of this Act shall be exempt from all state, county, and municipal taxes, except property taxes, and this exemption shall include income, inheritance and estate taxes."

Revenue Ruling (Rev. Rul.) 60-384, 1960-2 C.B. 172 provides that even though a wholly-owned state or municipal instrumentality may be a separately organized entity, it is not entitled to Internal Revenue Code (IRC) 501(c)(3) exemption, if is clothed with powers other than those described in IRC 501(c)(3). For example, where an instrumentality exercises substantial regulatory or enforcement powers in the public interest, it will not qualify. These powers are referred to as sovereign powers.

Three generally acknowledged sovereign powers by which the government governs are the power to tax, the power of eminent domain, and the police power. See *Estate of John C.F. Slayton*, 3 B.T.A. 1343 (1926) and *Estate of Shamburg v. Commissioner*, 3 T.C. 131, aff'd, 144 F.2d 998 (2d Cir. 1944), cert. denied, 323 U.S. 792 (1945). However, not all government powers are necessarily enforcement or regulatory powers within the meaning of Rev. Rul. 60-384.

As a government agency created by statute, to be recognized as exempt under 501(c)(3), you must satisfy the following four requirements:

- (A) you must be a separately organized entity;
- (B) you must not be an integral part of a state or municipal government;
- (C) you must meet the organizational test; and
- (D) you must not possess a disqualifying regulatory power.

You do not meet the organization test. Regulation 1.501(c)(3)-1(b)(1) requires that an organization's enabling document set forth purposes that limit it to exclusively serving one or more exempt purposes. Regulation 1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for an exempt purpose unless its assets are dedicated to an exempt purpose. This requires an adequate dissolution clause. Your enabling Ordinance and underlying statute do not limit your assets exclusively to charitable purposes upon dissolution.

[REDACTED]

You possess disqualifying sovereign (regulatory) powers. Rev. Rul. 73-563, C.B. 1973-2, determined a public transit authority created by an act of the state legislature to plan, acquire, finance, maintain and administer a rapid transit system within a specific geographic area encompassing several participating counties possessed disqualifying regulatory powers. The authority was empowered to set rates for the rapid transit system, determine what routes it would serve, and was not subject to the jurisdiction of the State Public Service Commission. In addition, the authority could maintain a security force to preserve and protect the facilities of the authority. The authority had the power to issue bonds. Such obligations were not deemed to be obligations of any of the participating local governments. The interest on all such obligations was exempt from all taxation within the state. The authority did not have the power of eminent domain but the participating bodies were, for the purposes of the authority, authorized to exercise the broadest power of eminent domain available to them.

The [REDACTED] has empowered you with sovereign powers which exceed the regulatory powers granted the public transit authority in Rev. Rul. 73-53. You are authorized to create and operate such agencies, departments, and instrumentalities as you may deem necessary or desirable. You may adopt, alter and repeal by laws, rules, and regulations. You also have the power to exercise the right of eminent domain.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

No provision of the Internal Revenue Code imposes a tax on the income of governmental units (such as states and their political subdivisions). It has therefore long been the position of the Service that income of governmental units is not generally subject to federal income taxation. If, however, an entity is not itself a governmental unit (or an "integral part" thereof), its income will be subject to tax unless an exclusion or exemption applies. One exclusion is provided by section 115(1) of the Code, which excludes from gross income, income (A) derived from the exercise of any essential governmental function, and (B) accruing to a state or political subdivision.

Your income may not be subject to tax, either because you are a governmental unit (or an "integral part" thereof), or because your income is excluded under section 115 of the Code. In addition, you may also be eligible to receive charitable contributions which are deductible for federal income, estate, and gift tax purposes; if so, you are probably exempt from many federal excise taxes. You may obtain a letter ruling on your status under section 115 of the Code, following the procedures specified in Revenue Procedure 2000-1 or its successor (the first Revenue Procedure published each year). You must also pay a user fee as described in that Revenue Procedure.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EQ:RA:T:2, Rm 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Joseph Chasin
Joseph Chasin
Acting Manager
Exempt Organizations
Technical Group 2

[REDACTED]

[REDACTED]